

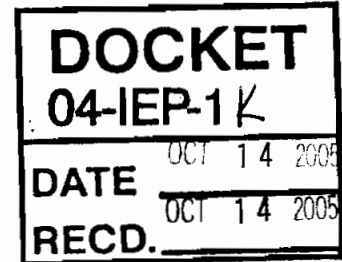


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October 14, 2005

California Energy Commission
Docket Office
Docket No. 04 IEP 1K
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512



RE: *Integrated Energy Policy Report*, Docket No. 04 IEP 1K

Dear Commissioners:

On behalf of Sempra Global, enclosed are comments in response to the Commission's 2005 Committee Draft Integrated Energy Policy Report.

Thank you for the opportunity to participate in this important proceeding. We look forward to continued work with Commissioners and staff to help California meet its energy and infrastructure needs.

Please feel free to contact me at (916) 492-4244 if you have any questions regarding this submittal.

Yours sincerely,

Bernie Orozco

Enclosure

**Comments of Sempra Global on
The California Energy Commission's Committee Draft
2005 Integrated Energy Policy Report
Docket No. 04-IEP-1K**

A. Introduction

Sempra Global is a wholly owned subsidiary of Sempra Energy and, in turn, is the parent of various business units participating in the energy markets serving the State of California. These business units develop, own and/or operate energy infrastructure, including power plants, pipeline and storage facilities, import terminals receiving and regasifying liquefied natural gas, and electric transmission facilities. In addition, members of the Sempra Global family provide a variety of services, including the marketing and trading of energy commodities, risk management and retail energy services across the entire energy-delivery chain. Sempra Global has a vital stake in the development of California energy markets and the policies under consideration in the 2005 Integrated Energy Policy Report. Based on our review of the Committee Draft Report, Sempra Global has the following comments on the findings and recommendations of the Committee.

Before turning to our specific comments, Sempra Global commends the Committee and the Commission Staff for the considerable effort and good thinking that went into the development of the Committee Draft. Taken together with the 2003 Integrated Energy Policy Report, the instant proceeding places the Commission well on its way toward establishing a nationally respected tradition of bringing together the best minds and most comprehensive data that can be brought to bear in the analysis of California energy issues and resolving them through consensus. Sempra Global in fact agrees with many of the findings and recommendations found in the Committee Draft. That we disagree with certain elements of the Committee Draft or that several of them are controversial should be of no surprise. As the Committee Draft makes clear, there are a host of competing public policies and interests that must be taken into consideration in the formulation of State energy policy and there are trade-offs that must be made in reaching the best answers. In addressing the findings and recommendations of the Committee Draft, Sempra Global found that our major disagreements with the Committee Draft arose from the different weightings we would ascribe to the various, and frequently conflicting, policy objectives considered by the Committee – rebalancing, reprioritizing, emphasizing or deemphasizing any particular objective can, as will be evident from our comments, change the ultimate recommendation in any given context. Our comments

will attempt to shed light on our view of the relative priorities we found most compelling or underrepresented with respect to the specific findings and recommendations we address.

In any event, Sempra Global wishes to express its appreciation to the Committee and the Commission Staff that have guided the IEPR process. We have found the process to be extremely open and accessible to the public. The 2005 process has built upon the 2003 process before it, and we fully support the Committee's and Commission's efforts to make the IEPR a "living document," subject to updating for more current data and accommodation of new ideas and thinking as circumstances, market conditions and technologies change.

B. Electricity Market Issues: Utility Procurement of Long-Term Resources

1. The Role of Utility Procurement

Sempra Global believes the Committee Draft correctly characterizes the infrastructure needs faced by California. The Committee Draft finds that some 24,000 megawatts of new generating capacity will be required through the year 2016 in order to maintain system reliability, meet expected growth in peak demand, replace expiring long-term contracts and permit the orderly retirement or repowering of the state's aging fossil-fired generating plants.¹ Sempra Global also agrees with the principal recommendation of the Committee Draft that this need should be satisfied through long-term agreements executed by the utilities following competitive solicitations.² The structure of the state's energy and capacity markets remain in the very early stages of development and regulatory and market certainty are not likely to exist for some time. Given these circumstances, the investment community prefers the advantages of utility ratemaking to assure financially stable markets and cost recovery for new infrastructure and the Committee Draft is correct to specify long-term utility procurements, conducted through all-source, competitive solicitations, as the best means by which to meet the resource requirements it identifies.³

Sempra Global anticipates that the utilities will require certain conditions in return for bearing the financial burdens associated with the long-term obligations they will be asked to assume. In part, the California PUC is addressing these conditions by providing for adjustments to a utility's rate of return in order to reflect the financial risks associated with long-term power purchase agreements.⁴ The California PUC has also provided some relief to utilities, resolving the risks of excess resources and stranded

¹ See Committee Draft at p.42.

² See Committee Draft Report, at pp.47-48. This is generally consistent with the findings of the California Public Utilities Commission in its seminal order regarding the long-term procurement plans that are to be filed by the state's investor-owned utilities every two years. See CPUC Decision 04-12-048 in CPUC Docket R.04-04-033.

³ See Committee Draft at pp.47-48.

⁴ See CPUC Decision 04-12-048 in CPUC Docket R.04-04-003, at pp.144-145.

investment that might occur due to load migration. Here, if a utility strikes an agreement or acquires a resource deemed to be beneficial to customers, it may assign an appropriate share of the costs of that agreement or resource to any load leaving utility bundled service for an alternative provider so that remaining customers do not assume any adverse consequences from the departure.⁵ At this point, Sempra Global agrees that these measures have been necessary, appropriately tailored and successful in terms of leading to the addition of needed resources to the California resource base.

Sempra Global notes that the Committee Draft omits any discussion related to the need to develop quickly a market in which standardized capacity obligations can be traded between market participants.⁶ Such a market, in which a standardized capacity product and/or instrument would be bought, sold, traded and exchanged,⁷ could, if sufficiently transparent and liquid, address the utilities' risks stemming from the long-term resource-procurement obligations the Committee Draft entrusts to them. Additionally, a deep, liquid and transparent capacity market could serve to facilitate compliance with the California PUC's pending resource-adequacy requirements by nonutility load-serving entities. Nonutility service providers currently face those requirements without any certainty that there will be products available to them and many, including a Sempra Global business unit, will hold capacity commitments far in excess of the retail loads contractually committed to receive service from them. Sempra Global concedes that the Commission may believe the merits and appropriate structure of a capacity market could require considerable further study and deliberation, and that the Commission may be unable to address these topics in the 2005 IEPR. In that event, Sempra Global urges the Commission to place the topic of capacity-market design on the list of subjects reserved for either a 2006 Update Report, if one is planned, or the 2007 IEPR and give the matter its due high priority.⁸

⁵ See CPUC Decision 04-12-048 in CPUC Docket R.04-04-003, at pp.55-61, citing CPUC Decisions 04-06-011 (San Diego Gas & Electric Palomar Energy Project) and 03-12-059 (Southern California Edison Mountainview Project).

⁶ While the Committee Draft references the "progress" the State is making "in beginning to create a capacity market to provide flexibility in meeting resource-adequacy requirements," Sempra Global is far from sanguine that there will be a liquid, transparent market in which the holders of generating capacity and load-serving entities can meet to resolve the State's resource-adequacy objectives. See Committee Draft at p.43. The Commission should expect that, in the absence of a focused effort on the part of the State's policymakers to address the development of supporting the resource-adequacy program, there will not be such a market, and certainly not in the time frame required for the contracting that must take place for the Summer 2006 demonstrations that will be filed by load-serving entities in the First Quarter of 2006. Adding to our pessimism is the Committee Draft's candid concession that the progress the State is making toward the development of a capacity market will not "induce construction of new power plants." Ibid.

⁷ Attached in Appendix A is a copy of the model capacity instrument developed by the members of the Western Power Trading Forum for these purposes. This instrument has been proposed by WPTF as the type of instrument and capacity product that could be traded in the capacity market we envision.

⁸ As an aside, the reference in the Committee Draft to "appropriate coming and going rules for departing load" would be a poor substitute for a liquid, transparent capacity market in which the utilities and other load-serving

Sempra Global submits that it has for some time advocated the adoption of a longer-term capacity obligation than is under consideration by the California PUC. In support of the tenor of the obligation we support, Sempra Global envisions that the California ISO would supervise a market in which capacity needs and resources would clear against one another across a four-year planning horizon. Such a market would, in our view, address system reliability in the near term and, if appropriately designed, provide financial incentives and support for the addition of new resources. The market structure we have proposed would provide that load-serving entities could hedge their positions in the ISO market through the self-provision of their resource and capacity needs. The California ISO would, as in the case of other U.S. regional transmission organizations with respect to capacity procurement and the California ISO with respect to short-term California energy markets, serve as the “backstop” procurement agency for unhedged positions and allocate the costs of resources it procures to load-serving entities. Sempra Global continues to support this market design in the various forums where the appropriate design of capacity markets is under consideration.

2. Greenhouse Gas Emissions

Sempra Global acknowledges that the implications of the Governor’s policies addressing a long-term reduction in California’s contributions to greenhouse gas emissions and global climate change should be considered in the 2005 IEPR.⁹ Sempra Global also understands the concern expressed in the Committee Draft that utility procurement should take into account greenhouse-gas emissions and contribute to meeting the Governor’s greenhouse-gas goals. There are, however, other important societal

entities would address resource needs and load migration. (See Committee Draft at pp.48-49.) In the first place, the historical record related to such rules indicates that these would involve administratively determined exit fees and cost allocations from the utilities to load-serving entities. In addition to the bias this imposes against switching, this policy fails to address the high-probability need on the part of nonutilities to shed the long-term obligations they will be required to hold in order to satisfy resource-adequacy requirements, but for which they have no retail customers. This need arises from existing market conditions under which retail customers have little or no incentive to execute long-term agreements with their providers while the State requires those same providers to demonstrate resource-adequacy commitments equal to ninety percent (90%) of their forecasted (and most likely imputed) peak-period demand, with a provision for a fifteen-percent (15%) minimum reserve margin, on a year-ahead basis. Without intending to do so, the State, through this combination of emerging rules governing resource-adequacy, reserves and long-term procurement, may well be establishing a market toxic to direct access.

⁹ Sempra Global takes no position on whether the Committee Draft’s proposed “GHG performance standard for utility procurement” is appropriately set at “no lower than levels achieved by a new combined-cycle natural gas turbine.” See Committee Draft, at p.71. Sempra Global does, however, appreciate the tension in the Committee Draft between this technology-specific standard and the Committee Draft’s earlier admonitions that gas-fired combined-cycle plants are ill-suited to load-following and peaker-type duty cycles and, due to current and expected conditions in natural gas markets, contribute to California’s vulnerability to electricity-price volatility. See Committee Draft at pp.38, 110. We presume that there are reasons the Committee Draft chose this technology as the benchmark for the standard, although these reasons are not explained in the Committee Draft.

goals that should be taken into account in energy policymaking. Therefore, Sempra Global submits that any program California might adopt in addressing global climate change should be carefully developed so as to enable a balance between these goals to be struck. Flexibility, including consideration of staged approaches, will provide the best path toward meeting what are potentially conflicting goals.

Sempra Global submits that global climate change is an international issue best addressed by nations.¹⁰ This suggests that the best approach to addressing the issue would ideally be at the international or national level. Recognizing California's desire to provide leadership where such broader programs may be lacking, Sempra Global believes that any attempts to implement mandatory and/or voluntary greenhouse-gas programs in the electric-power sector should be addressed, at a minimum, at the regional level since power markets are organized and structured across state lines based on the topography of regional transmission grids. This would both leverage California's influence and ensure that the state is not disadvantaging itself competitively relative to other states with less aggressive objectives or standards.

The Committee Draft correctly highlights the critical goal of assuring the development of new energy supplies and infrastructure to meet California's energy needs. In light of this goal, it is particularly important that as policies and programs addressing global climate change are developed that the State does not create disincentives to the construction of new energy resources or the execution of long-term commitments. To that end, Sempra Global agrees with the minority view of the Electricity Generation Subcommittee of the Climate Change Advisory Committee with respect to the manner in which a greenhouse-gas program should be designed.¹¹ We agree that such a program should be flexible and broad-based. In particular, a program unique to California or to the electric-power industry is unlikely to be effective, efficient or serve the needs of California.

Sempra Global submits that any program aimed at reducing emissions of greenhouse gases must include at a minimum multiple sectors of the California economy, including the transportation sector.¹² The program should also be done with in cooperation with at least the states in the western region. And an

¹⁰ Accord, see comments of the "minority of the subcommittee" of the Electricity Generation Subcommittee of the Climate Change Advisory Committee, Committee Draft at pp.139-140.

¹¹ See Committee Draft at pp.139-140.

¹² Sempra Global was particularly struck by the finding in the Committee Draft that the state's transportation sector is responsible for more than forty percent (40%) of statewide carbon-dioxide emissions and that the consumption of transportation fuels has risen forty-eight percent (48%) over the last twenty (20) years with the trend appearing to be unabated by high prices. Permitting the energy industry to exercise its wherewithal in this sector through a multi-sector program could speed compliance in both sectors as well as improve the likelihood that the aggressive goals set by the Governor can be achieved. See generally, Committee Draft at pp.E-1, 4 (see discussion of vehicle standards for new vehicles sold in model year 2009), 5-6 (fuel use), 133 (greenhouse-gas emissions).

even broader program where credit for actions taken outside the western region would certainly provide more opportunities for effecting net reductions in greenhouse gases.

Sempra Global submits that providing the most flexible means by which to achieve the carbon-dioxide standard will allow coal-fired resources to participate in the utilities' long-term procurements without frustrating the State's environmental objectives. By permitting coal-fired resources to participate in utility procurements, California can more readily achieve other important objectives of sound energy policymaking, several of which would be out of reach if these resources were to be effectively excluded from the California market. Specifically, the Committee Draft finds there are compelling reasons to avoid overdependence on natural gas as a powerplant fuel; principal among these are the disadvantages of deepening the link between price volatility in the electricity market to the increasing price and supply volatility forecasted in national natural gas markets.¹³ The volatility of natural gas prices is in part driven by the increasingly heavy demand from electric generators and increasing the cost of entry to coal-based resources will only increase California's dependence on natural gas as a source fuel. Assuring that coal is included in the fuel mix mitigates these interdependencies and linkages, all while providing a considerable measure of the supply security of an indigenous fuel source. Furthermore, the structure of domestic coal markets also provides long-term pricing stability that could effect greater discipline in the pricing of natural gas. As the Commission is well aware, hedging risks by diversifying fuel types and sources is a critical element of sound energy policy and creating disadvantages and barriers to entry for new coal projects only undermines the ability of the state's utilities to manage security, reliability, price and financial risks. Under circumstances where the State should be creating the financial incentives and investment environment that will result in the addition of 2000 megawatts of new generating capacity per year over the next decade, finding means by which to ameliorate these disadvantages and lowering entry barriers should be addressed with some urgency. Sempra Global submits that this can be done and coal-fired resources can be added to the California resource mix, all without compromising or frustrating the State's environmental objectives.

The Committee Draft implicitly acknowledges the benefits of keeping coal in the California fuel mix and intimates that advanced integrated gasification combined-cycle (IGCC) technologies are a viable means by which the economic and security benefits of coal can be captured without undermining the Governor's greenhouse-gas policies.¹⁴ In the context of the Committee Draft's proposed utility-procurement standard, this may be unrealistic. The gas-fired combined-cycle standard would still require

¹³ See note 9, above.

¹⁴ See Committee Draft at pp.68-70.

substantial mitigation of the carbon-dioxide emissions from an IGCC facility, under the significant assumption that ancillary sequestration-by-injection processes adequately address carbon-emission requirements. Under the California PUC's current practices governing utility procurement, the uncertainties surrounding the commercial application of IGCC technology in the West and the further uncertainties as to the viability of sequestration-by-injection techniques would essentially preclude the utilities from entering into long-term commitments with any developer or for its own project.¹⁵

Under the California PUC's rules, the investor-owned utilities submit long-term resource procurement plans every two years. The relevant ones affected by the 2005 IEPR from the developer perspective would be the utilities' 2006 and 2008 filings. These filings would lay the foundation for utility procurement activities conducted in the period 2006-2009, with the goal of resolving resource needs during the majority of the 2006-2018 planning period. In order to be considered, let alone be competitive and successful, any project entering the competitive solicitation would be required to meet availability and performance guarantees specified by the utilities. This typically requires operating guarantees requiring the resource's availability during no less than ninety-five percent (95%) of the hours constituting the utility's peak-demand period. These guarantees could be even more strict -- it is not unheard of that a procuring utility might require 100% availability at peak. Failure to meet this standard ordinarily obligates the seller to provide substitute capacity and/or energy to the extent of the shortfall and/or indemnify the utility for its replacement costs.

Sempra Global's current experience is that no IGCC contractor is willing to provide these necessary guarantees for a facility that would be located in the west, with or without carbon sequestration. IGCC technologies are not sufficiently mature that these guarantees can be offered or priced assuming the use of the water-heavy, high-ash and low-rank coals available in the west. Sempra Global anticipates that this situation will change over time, probably within a seven- to ten-year time frame, but if California permits

¹⁵ Sempra Global concedes that this would not be the case if a resource commitment was made to an IGCC project, with or without carbon sequestration-by-injection, outside a competitive solicitation or through an evaluation based on criteria other than those used in the least-cost, best-fit analyses ordinarily performed by the utilities in their recent selections of long-term resources from competitive solicitations. Waivers of any performance requirements or the provision of financial incentives, including those related to full cost recovery regardless of plant performance, could be used to facilitate the development of an IGCC facility in the West under contract to or ownership by a California utility. Sempra Global is familiar with the incentives under study by the Clean Coal Policy Working Group (an element of the Clean Coal Task Force of the Clean and Diversified Energy Advisory Committee of the Western Governors Association) that may address the first-cost and first-mover disadvantages that developers of a western IGCC facility would face. Because these incentives were under study at the time these comments were prepared (the Working Group's study was in draft form and carried admonitions that its conclusions had not yet been adopted by the Working Group, the Task Force, the Advisory Committee or the Association) and are not otherwise discussed as an option in the Committee Draft or in the California PUC's resource proceedings, Sempra Global has no comment on the whether IGCC projects should be pursued outside the competitive-solicitation process or financial incentives are appropriate in order to support an IGCC project.

IGCC, with or without sequestration-by-injection of carbon-dioxide emissions, to be the only coal-fired technology entering the California generation mix and the only means by which California would capture the benefits of coal-fired resources, it should be assumed that no coal-fired resources will be added to the California resource mix until 2015 at the earliest. This could result in sacrificing the Committee Draft's policy goals related to maintaining reasonable rates, capturing the fuel-diversity and –security benefits offered by coal, and assuring new capacity is added to the California resource base in a timely fashion. Sempra Global submits that the adoption of flexible mitigation programs, including a multi-sector, geographically unbounded program as well as other innovative emission-mitigation strategies, is essential to avoiding this outcome. In the interim period through 2015, this will also have the salutary effect of allowing newer coal plants using more modern technologies to enter the market, potentially facilitating the earlier retirement of the older, higher-emission coal facilities studied in this proceeding without concomitantly removing coal from the California resource mix altogether.¹⁶

3. Constitutional Limitations on State-Imposed Constraints in Power Markets

As the Commission is well aware, the Committee Draft's proposed environmental-performance standard for resources procured by the utilities has serious implications for coal-fired resources seeking to compete in the California market. Because these resources are likely to be located out-of-state, the Committee appropriately called upon its counsel to perform a legal analysis of whether environmental-performance standards that would, either directly or by effect, discriminate against out-of-state facilities would pass muster under the Interstate Commerce Clause or the Supremacy Clause of the U.S. Constitution. Sempra Global concurred with many of the findings of the Commission's Counsel regarding the constitutional permissibility of state policies that would place environmentally oriented restrictions on power imports.¹⁷ Commission Counsel reached two general conclusions related to the application of the Interstate Commerce Clause of the U.S. Constitution. (See U.S.Const., Article I, Section 8, cl.3.) First, Counsel indicated that any specified environmental control or mitigation required of out-of-state plants would likely be defective as an attempt to impose extraterritorial regulations, even if those regulations were applied equally to in-state and out-of-state plants. Second, Counsel opined that specified environmental-

¹⁶ This would support the objective identified in the Committee Draft to use the imminent utility procurements to modernize and transform the California generation fleet, without waiting until 2015 or beyond to do this for coal facilities. See Committee Draft at p.42. While the Commission might prefer IGCC as the ultimate solution, Sempra Global submits that advanced coal projects such as Granite Fox still represent advantages over maintaining older legacy plants in the resource base and offer the further advantage of being readily and imminently available to the market.

¹⁷ See "Overview of Constitutional Limitations on Out-of-State Procurement Criteria," Jonathan Blees, Assistant Chief Counsel, August 18, 2005.

performance criteria might be permissible if applied in a nondiscriminatory manner to in-state and out-of-state plants and if reasonably related to potential harms occurring in California.

Sempra Global agrees with Commission Counsel that any express or implied discrimination against out-of-state facilities is impermissible and invalid on its face, irrespective of the scale of the impact on interstate commerce. As Counsel opined at the August 18, 2005, workshop in this proceeding, the Interstate Commerce Clause precludes the adoption of regulations aimed specifically at out-of-state plants or coal-fired plants or, even if applied to all generating facilities without regard to whether they were in California or out-of state, set at levels that would discriminate against out-of-state sellers in practical effect. Sempra Global submits that the combined-cycle standard adopted in the Committee Draft has such a practical effect. That is, standing alone, the standard discriminates against coal-fired resources and no one has suggested that these resources are likely to be located anywhere but out-of-state. While an offsets program would reduce the level of that discrimination, Sempra Global submits that the structure of the standard favors one fuel as against another, with the disfavored fuel being the one utilized almost exclusively by out-of-state facilities. Moreover, the standard proposed in the Committee Draft only applies to those incremental resources procured by the utilities, leaving a large exemption for existing facilities. As the developer of two western coal-fired projects, Sempra Global has submitted comments indicating that its proposed projects are expected to outperform many existing coal-fired plants included in the California supply portfolio. Targeting new projects creates a discriminatory exemption for legacy plants currently serving California, bringing into question whether the rule is rationally crafted so as to address the potential harms of greenhouse gases to California or, rather, designed to preclude the entry of new out-of-state coal-fired plants into the regional and interstate power markets of which California is a part. Commission Counsel concluded with the admonition that a complete record on the effects of any regulation as to the impacts on both interstate commerce and the harms being addressed should be developed prior to the adoption of the regulation. Sempra Global reiterates its earlier comments that the current state of the record in this Integrated Energy Policy Report proceeding falls far short of “complete,” and that the Commission should defer action on the adoption of environmental-performance regulations that would be applied to out-of-state generating plants.¹⁸

Commission Counsel also alluded to the need to avoid conflicts with the jurisdiction of the Federal Energy Regulatory Commission if the Commission imposes environmental-performance criteria on

¹⁸ However incomplete the record in the 2005 IEPR proceeding on this matter may be, Sempra Global concedes that it is far more developed than any record developed by the California PUC prior to that agency’s adoption of its “Policy Statement on Greenhouse Gas Performance Standards” of October 6, 2005.

imported power. In this regard, Sempra Global believes that the Commission should evaluate any such proposed environmental performance criteria in light of the Supremacy Clause of the U.S. Constitution. (See U.S. Const., Article VI, para.2.) In evaluating the validity of state regulations under this provision of the Constitution, the State is required to consider whether its regulations would interfere with laws expressing the intent of Congress and a comprehensive federal scheme of regulation. The FERC exercises a broad jurisdiction over interstate power markets and has developed an integrated scheme of regulations favoring nondiscriminatory open access to interstate transmission facilities and unfettered, competitive energy markets. To this end, the FERC has implemented policies related to regional transmission organizations, open-access transmission tariffs, generator-interconnection standards, market-based ratemaking and the application of the filed rates doctrine for interstate transactions. Additionally, the enactment of the Energy Policy Act of 2005 confers an additional jurisdiction on the FERC related to the oversight of a national electricity reliability organization and grid-reliability standards. Interference with the interstate market for power as organized and administered by the FERC under its integrated set of regulations and/or the operation of the interstate transmission grid pursuant to any grid-reliability standards implemented under the 2005 Act would run afoul of the Supremacy Clause restrictions on state interference with a federal regulatory scheme consistent with the express intentions of Congress. Sempra Global reiterates its previous recommendation that any proposed California rules, prior to their adoption and implementation, that might require additional environmental mitigations for out-of-state facilities as a condition of selling power to California should be submitted to the California ISO and the FERC for a determination as to the extent to which such rules would undermine or are consistent with either the operation of the interstate transmission grid or the interstate power market.

4. Other Electricity Matters

Sempra Global strongly agrees with the Committee Draft's recommendation that electric transmission corridors should be identified early and reserved for future use and, where necessary, that appropriate ratemaking recognition of corridors reserved for future use be permitted.¹⁹ In order to enhance the effectiveness of this process, Sempra Global encourages the Commission to participate in the recent Notice of Intent issued by the U.S. Departments of Energy and Interior under which these agencies, on behalf of several federal agencies and departments, will develop a programmatic environmental impact

¹⁹ See Committee Draft at pp.75, 84.

statement so as to identify and reserve future transmission corridors across federal lands in the west.²⁰ The federal process was initiated under the aegis of the Energy Policy Act of 2005 and has the objective of designating “national interest corridors” for the transportation of various energy-related commodities, including electric power. Sempra Global believes that coordinating the state transmission-siting process described in the Committee Draft with the federal process will result in a more effective long-term program and integrated land-use policies. While this would certainly be true for any state, it presents an especially compelling opportunity for California since for the foreseeable future California is expected to remain the largest load sink in the region and the likely terminus for many of the corridors that will be identified, studied and reserved.

C. Natural Gas Issues

Sempra Global agrees with the Committee Draft’s findings that California needs to diversify its natural gas supply sources and seek additional natural gas supplies from more cost-competitive and reliable sources.²¹ We obviously support the Committee Draft’s finding that liquefied natural gas is among the more attractive supply options available to meet the state’s future needs.²² Sempra Global is well on its way to bringing its Energia Costa Azul terminal, located fifty miles from the international border, into operation and, presuming that proceedings now pending before the California PUC do not result in substantial economic barriers to the entry of supply from Mexico into the state, we anticipate that LNG supplies can be added to the California supply mix as early as the First Quarter of 2008. At present, the total cost to deliver supplies into California from the project are expected to remain well below the market prices currently available at the California border, making entry of LNG into California from the Sempra facility likely (although, again, this presumes favorable CPUC action on various regulations under review).

As the Committee Draft points out, there are several active proceedings addressing gas-quality issues and Sempra Global has been an active participant in proceedings before the Federal Energy Regulatory Commission, the California PUC, the California Air Resources Board (CARB), and the California Division of Oil, Gas, and Geothermal Resources that may result in the adoption of new or revised gas-quality standards. We believe these proceedings will largely resolve gas-quality issues and assure public safety, environmental compliance and system reliability as the California supply mix changes. The timing

²⁰ See Joint Notice of Intent to Prepare a Programmatic Environmental Impact Statement, Amend Relevant Agency Land Use Plans, Conduct Public Scoping Meetings, and Notice of Floodplain and Wetlands Involvement, Fed.Reg.Vol.70, No.187, p.56647, September 28, 2005.

²¹ See Committee Draft at p.107.

²² Ibid.

of the completion of these proceedings is, however, open to speculation and Sempra Global urges the Commission to encourage the California Air Resources Board in particular to conclude that agency's review of natural-gas-vehicle fuel standards as quickly as possible and no later than by the end of 2005. The vehicle-fuels segment of the natural gas market is an extremely small fraction of total deliveries but regulations for this market segment will determine whether substantial conditioning costs would be necessary prior to delivering these supplies into California and, ultimately, whether LNG supplies can be added to California on an economic basis.²³ LNG terminal developers and operators require the earliest possible resolution of the regulatory risks associated with gas-quality issues and the mid-2006 target for adoption of standards by the Air Resources Board continues a significant and undue uncertainty too far into the development and construction cycles now planned by developers. Assuming that pending regulatory processes are concluded in a timely fashion, Sempra Global agrees with the Committee Draft that legislation is not required to address the issue of gas quality.²⁴

D. Renewable Portfolio Standards

The Committee Draft correctly describes the status of the developing rules under which nonutility energy service providers will be complying with the state's renewable portfolio standards.²⁵ Sempra Global agrees with the Committee Draft Report that the utility model for the procurement of renewable resources tends not to fit the business model of the typical nonutility energy service provider and the market conditions faced by this segment of the industry. In particular, nonutilities generally find their customers prefer shorter term commitments, particularly when, as now, rates are high and trending upward and the difference between utility bundled rates and alternative offers are slim. Thus, requiring nonutility energy service providers to demonstrate compliance with the renewable portfolio standard through the execution of long-term supplier agreements and/or the filing of resource-procurement plans with the California PUC could place them under risks that threaten their competitiveness and, over the long-term, their economic viability.

Sempra Global agrees with the Committee Draft's finding that energy service providers need short-term contracting flexibility in order to preserve their competitiveness in the market.²⁶ In addition, Sempra

²³ For the Commission's information, Sempra Global has been recommending, along with other members of the natural gas industry, that the Air Resources Board revise its compositional regulations to include a statewide minimum methane number of seventy-three percent (73%) (i.e., "MN73").

²⁴ See Committee Draft at p.117.

²⁵ See Committee Draft at p.96. Sempra Global anticipates that the California PUC will act by the end of the year to adopt rules governing nonutility compliance. See CPUC Docket R.04-04-026.

²⁶ See Committee Draft at p.96.

Global strongly supports, for reasons similar to our support of liquid, transparent capacity markets, the Committee Draft's recommendation that the use of unbundled renewable energy credits be allowed so as to provide energy service providers with a compliance tool suited to their business.²⁷ While this would necessitate the further development of the structure for the use of this tool and additional rules to assure that the use of renewable energy credits are consistent with the State's underlying resource objectives, Sempra Global agrees with the Committee Draft that the State should permit unbundled credits to be used on a limited basis while this work is ongoing and until the Western Renewable Energy Generation Information System (WREGIS) is fully operational.

The use of unbundled renewable energy credits would greatly enhance the opportunity for buyers and sellers to find and transact with one another. Sempra Global believes that, until WREGIS is operational, the use of tradable credits certified under the "Green-E" program of the Center for Resource Solutions provides a reasonable interim solution and mechanism. The program is familiar to the industry and has a successful track record of authenticating and tracking renewable energy credits. As another possible alternative, unbundled credits could be based on generator certifications using affidavits executed by generators – this is the process used in the State of New Jersey in its renewables program. As the Committee Draft acknowledges, these kinds of options will provide more flexibility to load-serving entities as they attempt to comply with the renewable portfolio standard and a market-based method for acquiring and shedding resources to meet the near-daily changes in their customer commitments.

E. Conclusions and Summary

Sempra Global once again commends the Commission, its Staff and the Committee on its design and management of the 2005 IEPR process and the Committee Draft it produced. The IEPR process has both elevated the level of the debate on many complex and interrelated energy issues and advanced the search for solutions. Sempra Global agrees with and supports many of the findings and recommendations found in the Committee Draft and is committed to assisting the Commission in the further deliberation of how to accommodate the various, sometimes conflicting goals of the State within a cohesive, integrated energy policy. With respect to the Committee Draft, our largest disagreement is related to the manner in which the State might preserve the ability of coal-fired resources using conventional technologies to participate in the California energy market so that the State's goals related to resource adequacy and price stability can be met. We strongly believe this can be done without frustrating the State's objectives related

²⁷ See Committee Draft at pp.96-97.

to reducing California's contributions to greenhouse-gas emissions and climate change by permitting the use of flexible and innovative environmental-compliance strategies, without relying on unproven or emerging technologies.

Respectfully submitted

Sempra Global
101 Ash Street
San Diego, California 92101

October 14, 2005

Appendix A

WPTF Model Standard Capacity Product Confirmation Schedule FCO (For use in California only)

WPTF Draft of July 6, 2005

Standard Capacity Product Confirmation Schedule FCO (For use in California only)

1. **Definition of the Transaction:** When fully executed, this Confirmation Agreement ("Confirmation Agreement") shall provide the terms and conditions representing the negotiated transaction (the "Transaction") between _____ ("_____ " or "Seller") and _____ ("_____ " or "Buyer"), together the "Parties", in which the Seller agrees to sell to Buyer the resource-adequacy product described below. Except where the terms and conditions of this Confirmation Agreement are in conflict either generally or specifically with the terms and conditions of the Edison Electric Institute ("EEI") Master Power Purchase & Sale Agreement executed as between the Parties, or with such other agreement as agreed by the Parties, such latter agreement dated _____ ("the Master Agreement") and to which this Confirmation Agreement is an addendum, this Confirmation Agreement shall be subject to the terms and conditions of such and any amendments thereto entered into between the Parties under the Master Agreement. Where the terms and conditions of this Confirmation Agreement are in conflict with the terms and conditions of the Master Agreement, the terms and conditions of this Confirmation Agreement shall govern the rights and obligations of the Parties hereunder. The definitions and provisions contained in the Master Agreement and in the tariffs and/or protocols of the California Independent System Operator (CAISO) as amended from time to time (the "Tariff") shall apply to this Confirmation Agreement and are incorporated by reference.
2. **Legal Description of the Seller:**
3. **Legal Description of the Buyer:**
4. **Nature of the Confirmation Agreement:** Subject to the terms and conditions of this Confirmation Agreement, Seller shall sell to Buyer and Buyer shall purchase from Seller the Contract Quantity of Forward Commitment Obligation capacity ("FCO Capacity") specified below.
5. **Definition of the Resource-Adequacy Product:** Seller agrees to sell and buyer agrees to purchase a resource-adequacy product, also known as "Forward Commitment Obligation Capacity" ("FCO Capacity"). "FCO Capacity" means the qualified and deliverable capacity from the Specified Resource(s) identified below and in the Contract Quantity specified in this Confirmation Agreement which can be counted toward meeting Buyer's resource-adequacy requirements as described in Decisions 04-10-035 and 05-xx-xxx [modify to include reference to Phase II decision when issued] of the California Public Utilities Commission ("CPUC"), as those requirements may be amended from time to time by the CPUC or other jurisdictional entity responsible for establishing, administering and/or enforcing resource-adequacy requirements. FCO Capacity does not confer to Buyer any right to the Contract Quantity of Seller's Specified Resource(s) other than the right to include such Contract Quantity in Buyer's resource-adequacy demonstrations as FCO Capacity during the Delivery Period. Specifically, unless otherwise agreed as between the Parties in writing, Buyer shall have no rights under this Confirmation Agreement to purchase energy and/or ancillary services from the Contract Quantity associated with the Specific Resource(s).
6. **Specific Resource(s):** *[list of one or more physical generating units deliverable to the Delivery Point]*
7. **Delivery Period:**

8. Contract Price: *[Represent using \$ per mw-mo convention]*
9. Contract Quantity: *[number of megawatts sold from each Specific Resource(s)]*
10. Delivery Locations(s): *[e.g. NP-15, SP-15, etc., or, where applicable, LAP1, LAP2, etc., or, where applicable, LRA1, LRA2, etc.]*
- 11.

Additional Covenants and Warranties of the Seller: Seller makes the following additional covenants, warranties and representations.

- a. Seller is duly licensed and certificated by all applicable jurisdictional regulatory agencies and bodies, and as such holds the necessary authorities, to participate in the CAISO markets.
- b. Seller meets the credit requirements necessary to participate in the CAISO market.
- c. The Contract Quantity is owned or controlled by Seller for each Specific Resource specified above.
- d. The Specific Resource(s) has been registered with and/or certified by the CPUC and/or by the CAISO as deliverable to the Delivery Location(s); *provided*, that if the Specific Resource(s) is(are) are not so registered and/or certified, Seller will take all reasonable steps to assure that the Specific Resource(s) is(are) registered and/or certified prior to the commencement of the Delivery Period in the amount no less than the Contract Quantity of FCO Capacity sold under this Confirmation Agreement.
- e. The amount of the FCO Capacity sold under this Confirmation Agreement is unencumbered by any other sale, any assignment, or any rights conferred to any party other than the Buyer.
- f. For each Specific Resource(s), unless the Specific Resource(s) is(are) forced out of service or is(are) out for planned maintenance as approved by the CAISO or conditions constituting force majeure arise, Seller will:
 - i. Make the Contract Quantity available, to the extent required by the CAISO and/or CPUC, to the CAISO consistent with the terms of the CAISO tariff for every hour of the Delivery Period, by self-scheduling or permitting Buyer's Scheduling Coordinator to self-schedule the Contract Quantity of the Specific Resource(s) or by bidding the Contract Quantity of the Specific Resource(s) into the CAISO's day-ahead energy and ancillary services markets for every hour of the Delivery Period; *provided*, that prior to the implementation of the CAISO's Market Redesign and Technology Update proposal, if the CAISO denies Seller's request for a waiver of any commitment of the unit for the next operating day, Seller shall commit the Specific Resource(s) during the next operating day and self-schedule or submit bids in an amount no less than the Contract Quantity into the CAISO's markets as required by the CAISO during that next operating day; and,
 - ii. Dispatch the Specific Resource(s) in an amount not less than the Contract Quantity of megawatts in the CAISO's market for energy and ancillary services pursuant to any schedules and/or instructions of the CAISO issued in accordance with the terms of the CAISO tariff.
- g. Seller shall not commit any portion of the Contract Quantity, including but not limited to the sale or scheduling of firm energy to any party outside the CAISO control area, until all obligations to Buyer and/or CAISO under the contract and/or the CAISO tariffs have been met or are extinguished.
- h. Seller will maintain or cause to have maintained the Specific Resource(s) using "Good Utility Practice" as defined in the CAISO tariff.

12. **Additional Covenants and Warranties of the Buyer:** Buyer makes the following additional covenants, warranties and representations.

- a. Buyer holds the necessary authorities to participate in the CAISO markets.
- b. Buyer meets the credit requirements necessary to participate in the CAISO markets.

13. **Effect of the Master Agreement:** The Parties will rely on the standard terms and conditions of the Master Agreement in determining each's rights and obligations except as otherwise mutually agreed in writing and subject to the provisions of this Confirmation Agreement.

14. **Mutual Cooperation to Meet Resource-Adequacy Requirements:** The Parties will make all commercially reasonable efforts to ensure the Product meets the resource-adequacy requirements of the CPUC and/or the CAISO; *provided*, that such commercially reasonable actions shall not include any obligation that the Seller undertake capital improvements, facility enhancements, or the construction of new facilities unless otherwise agreed in writing.

15. **Mutual Cooperation to Preserve the Benefits of the Bargain:** Where necessary to modify this Confirmation Agreement to conform its terms and conditions to changes in circumstances or regulations affecting the benefits of the bargain struck by the Parties, the Parties agree to negotiate in good faith to modify this Confirmation Agreement so as to address such circumstances or regulations while preserving the benefits of the bargain struck by the Parties.

16. **Indemnity Against Penalties:** Seller agrees to indemnify Buyer for any monetary penalties assessed by the CPUC and/or the CAISO against the Buyer for Buyer's failure to meet the requirements of the CPUC and/or the CAISO related to the Buyer's obligation to submit an approved resource-adequacy demonstration to the extent any such penalties were the direct

result of Seller not fulfilling any of its obligations under this Confirmation Agreement; *provided*, where Buyer is in breach of this Confirmation Agreement or the Master Agreement, Seller's obligations to perform under this Confirmation Agreement and/or to indemnify the Buyer for any monetary penalties are waived.

17. **Governing Law**: The Parties agree that the terms and conditions of this Confirmation Agreement and the rights and duties of the Parties shall be governed by and construed, enforced and performed in accordance with the laws of the State of California, without regard to principles of conflicts of law or contrary provisions of the Master Agreement, if any. Each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Confirmation Agreement.

IN WITNESS WHEREOF, the Parties have caused this Confirmation Agreement to be fully executed as of the date first written above.

By Seller:

By Buyer:

By_____

By_____

Name:_____

Name:_____

Title:_____

Title:_____